



REMARKS

1. Priority

Applicants respectfully traverse the denial of Applicants' priority claim with respect to pending Claims 1 and 5. With respect to Claim 1, the Examiner has rejected Applicants' claim to priority based on the parent (now U.S. Patent No. 6,291,431). The parent inherently discloses the complete sequence. The polypeptide is identified and purified. Col. 8 - Lines 15 - 32. The weight corresponds to Seq ID 16. It is shown to be immunologically active. Col. 8, line 33 - Col. 9, line 50. Known methods of sequencing are described for related polypeptides. Col 9, line 62 - Col. 10, line 11. Antibodies to RAP are prepared and disclosed, which one could use to easily obtain purified RAP. Col. 12, lines 4 - 46. It is clear that one of skill in the art, given the complete polypeptide of RAP in the parent, was inherently taught the amino acid sequence for that polypeptide (SEQ ID 13). Further evidence can be found in the homology between SEQ ID 6 of the reference (partial sequence) and in amino acids 3-11 in the NH2 terminal sequence of SEQ ID 13. It is clear that one could have used SEQ ID as a primer for well known PCR to pull out the full sequence. Where the parent application inherently, albeit not expressly, provides enabling description of the express limitations of the CIP claims, the CIP will be entitled to the filing date of the parent for those claims. Kennecott Corp. v. Kyocera Intern, Inc., 835 F. 2d 1419 (Fed. Cir. 1987), *cert. denied*, 486 U.S. 1008 (1988). Accordingly, Applicants respectfully submit that

SEQ. ID NO. 13 was disclosed in the parent application and that the claim of priority with respect to Claim 1 should therefore be permitted.

Similarly, Applicants believe that the claim of priority with respect to Claim 5 is proper. However, in an effort to further prosecution of this application, Applicants have amended Claim 5 to delete reference to antigenically active fragments of RAP and is now directed to “a vaccine comprising the RNAIII Activating Protein polypeptide of claim 1.” Accordingly, as noted above, RAP itself is shown to be active. Therefore, the priority claim with respect to amended Claim 5 is also amply supported. Priority to the earlier filing date is proper for Claim 1 and amended Claim 5.

2. Drawings

In the Office Action, the Examiner objected to FIG. 5 as referring to sequences without sequence identifying numbers being described within the figure itself or the brief description of the drawings section. Applicants have amended the Brief Description of the Drawings section of the application to refer to the sequence identifying numbers.

3. Claim Rejections

A. 35 U.S.C. 112 (first paragraph)

In the Office Action, the Examiner rejected Claim 5 based on 35 U.S.C. Section 112 (first paragraph), stating that the Specification fails to set forth a specific antigenically effective portion of the RAP polypeptide. In response, Applicants have deleted the reference in Claim 5 to “an antigenically effective

portion.” Accordingly, Applicants respectfully submit that the 35 U.S.C. 112 rejection is now moot. During a telephone conversation with Examiner Hines on September 12, 2005, Ms. Hines tentatively agreed that such amendment would remove the 35 U.S.C. 112 rejection of Claim 5.

B. 35 U.S.C. 102

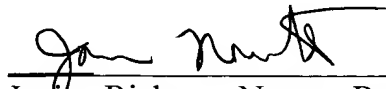
Balaban et al. (Science 1998) and Balaban (WO99/32133)

For the reasons stated above, the instant application should receive the benefit of priority and therefore neither Science 1998 or WO99/32133 is citable against the instant application.

Based on the foregoing Amendments and Remarks, favorable reconsideration and withdrawal of the objections and rejections is respectfully requested. Applicants respectfully request that the Amendments be entered as placing the present application in condition for allowance. If the Examiner has any comments or suggestions that could place this application in even better form, the Examiner is requested to telephone the undersigned attorney at the below-listed number. If there are any additional fees incurred by this Amendment, please deduct them from our Deposit Account No. 23-0830.

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Respectfully submitted,



Janine Rickman Novatt, Reg. No. 32,593

Weiss, Moy & Harris, LLP
4204 N. Brown Avenue
Scottsdale, AZ 85251
(480)994-8888